

# EXHIBIT RR

ORIGINAL

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1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK  
4 Civil Action No. 06 Civ. 8193(PAC) (DF)  
-----x

5 CLEAR CHANNEL OUTDOOR, INC.,  
6 Plaintiff,

7 - against -

8 THE CITY OF NEW YORK and PATRICIA J.  
9 LANCASTER, in her official capacity as  
10 Commissioner of the New York City  
11 Department of Buildings,

12 Defendants.  
-----x

13 Civil Action No. 06 Civ. 8219(PAC) (DF)  
-----x

14 ATLANTIC OUTDOOR ADVERTISING, INC., SCENIC  
15 OUTDOOR, INC., TROYSTAR CORPORATION and  
16 WILLOW MEDIA, L.L.C.,

17 Plaintiffs,

18 -against-

19 CITY OF NEW YORK, PATRICIA J. LANCASTER,  
20 and EDWARD FORTIER,

21 Defendants.  
-----x

22 March 11, 2008  
23 1:50 p.m.

24  
25 Deposition of DANIEL DOCTOROFF,  
pursuant to Notice, held at the offices of  
Davis Wright Tremaine LLP, 1633 Broadway,  
New York, New York, before Jineen Pavesi,  
a Registered Professional Reporter,  
Registered Merit Reporter, Certified  
Realtime Reporter and Notary Public of the  
State of New York.

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DOCTOROFF

Q. What did he talk about?

A. I don't remember.

Q. Did he talk about billboards?

A. I don't remember.

Q. Did he talk about street  
furnishings?

A. I don't remember.

It probably would have been one  
of 60 meetings I would have had that week.

Q. I would like to show you a  
document previously marked as Clear  
Channel Exhibit 30.

(Witness perusing document.)

Q. I know many of those pictures  
are not very legible, but does this appear  
to be the presentation and PowerPoint that  
was presented and distributed at the  
meeting?

A. I don't recall, other than the  
fact on appendix D it says PowerPoint  
presentation made by Van Wagner  
communications to Deputy Mayor Doctoroff  
and staff.

I don't remember the

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1 presentation, but I assume this was the  
2 presentation given the label.  
3

4 Q. Was the PowerPoint projected on  
5 a screen?

6 A. Yes.

7 Q. Let's go to page Bates numbered  
8 1501, which reads, "The problem; New  
9 York's arterial highways and streets are  
10 cluttered with illegal advertising  
11 signage."

12 Does that heading refresh your  
13 recollection as to whether that was one of  
14 the subjects of the presentation discussed  
15 at the meeting?

16 A. It does not refresh my  
17 recollection as much as the e-mail that  
18 you showed me before which said that was  
19 one of the topics that was going to be  
20 discussed.

21 Q. In the first paragraph, the  
22 final two sentences read, "More than \$50  
23 million was spent on the legal New York  
24 City outdoor media in 2005. If New York  
25 City laws had been enforced, a significant

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portion of that money could have been spent on forms of outdoor advertising that provide revenue for the city such as the street furniture program."

Do you see that?

A. I do.

Q. Do you recall that point being made?

A. I do recall the point being made and I also recall that to me that point was irrelevant, that I was never motivated at any time in my thinking about billboards and policies related to illegal billboards or arterial highway signs by considerations of money, it was only by considerations of aesthetics.

There was never a confluence -- there never was expressed, certainly not in my presence, a connection between reducing any form of signage in order to increase the value of the street furniture franchise.

Q. When that point was made, did you disabuse Mr. Schaps or the other Van

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Wagner representatives of their thinking?

A. I don't think so, but that wouldn't be unusual, they were in to make a point and I felt little need I'm sure to rebut it.

Q. Assuming that your testimony is accurate, and I don't begin to suggest the contrary, that it was simply not a factor in your thinking or the city's policies, namely the increase of revenue, was it nonetheless accurate to say that if hundreds of outdoor billboards came down it would somewhat increase the value of other advertising?

A. I don't believe that is the case for the reasons that I expressed earlier.

I have always viewed the billboard market and the street furniture market for advertisers, whether it is right or wrong I don't know, but to be different markets, one for motorists and their passengers and one for pedestrians.

So I don't ever even remember

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1 thinking about the connection between the  
2 two.  
3

4 Q. But you do remember that he  
5 made the point?

6 A. Yes.

7 Q. You also -- perhaps I am  
8 wrong, I don't want to mischaracterize  
9 your testimony -- I thought you did  
10 testify that as you looked at outdoor  
11 advertising generally, that you would  
12 agree that there were many advertisers  
13 that chose to advertise both on billboards  
14 and on shelters --

15 A. But that's not relevant in my  
16 view.

17 The fact that an advertiser  
18 might choose to advertise on a billboard  
19 and on street furniture doesn't mean that  
20 if you didn't advertise on one you would  
21 spend more on another because you're  
22 trying to reach different people with  
23 different media.

24 Just like you would say, well,  
25 you know, if I don't advertise on TV I'm



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going to spend more.

They serve very different purposes in my mind, so I don't acknowledge that he even for companies that would advertise on both, that a decline in one would result in an increase in another.

Q. Let's take some sample advertisers, for example.

Soon-to-be-released motion pictures, automobiles, beer --

A. No, I acknowledge that there are some advertisers that would advertise on both, that also advertise on TV and advertise on the radio and advertise in magazines and newspapers and on the Internet.

What I don't acknowledge is that a reduction in spending on one leads to an increase in spending on the rest for any specific form of advertising.

Q. Let's change increase in spending in your sentence to increase in demand.

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1  
2 A. I don't think that's the case,  
3 because they serve different purposes.

4 Q. What are the differences in  
5 those purposes?

6 A. Different sets of people,  
7 different targets, different demographics,  
8 different experiences.

9 The experience of walking by  
10 something is a very different experience  
11 than what you experience driving by  
12 something and I just don't believe they  
13 think of them as substitutable.

14 Q. But for the advertiser who  
15 wants to promote the motion picture or the  
16 beer or the new automobile, what's the  
17 different purpose that is achieved --

18 A. It is not the different  
19 purpose, it is the different audience and  
20 different experience of seeing the  
21 advertisement.

22 Q. Did you understand that Van  
23 Wagner's billboards were largely legal tap  
24 meeting?

25 A. As I reflect on the meeting, I

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believe Richard Schaps made that point.

Q. Did you understand that Van Wagner could profit substantially by stricter enforcement?

A. I had absolutely no doubt what their motivation was.

However, it was not inconsistent with my perspective on illegal outdoor advertising, but I came at it from a very different perspective.

I recognized they could care less about the aesthetics, we did; but where there is a confluence of interest, I would certainly be willing to listen.

Q. How was the meeting left at its conclusion?

A. I think it was we'll think about it and get back to them.

Q. Did you do anything or write to anyone after the meeting?

A. I don't believe so, but I could be wrong.

Q. Did you receive any letters regarding the meeting?

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1  
2 A. I vaguely recall this coming  
3 afterwards, but I may also be wrong about  
4 that.

5 Q. So you have no recollection one  
6 way or the other about receiving letters?

7 A. No, I don't.

8 Q. I would like to show the  
9 witness an exhibit previously marked as  
10 No. 31.

11 (Witness perusing document.)

12 Q. Have you seen Exhibit 31  
13 previously?

14 A. I think I did.

15 Q. Is Mr. Schaps accurate that you  
16 quickly understood how important it was to  
17 properly introduce and enforce the new  
18 regulations?

19 A. I think that's accurate.

20 Q. Did you have any problem with  
21 his reaching out to Commissioner Lancaster  
22 and having his counsel contact Mona Sehgal  
23 and --

24 A. No, it was always a concern  
25 about illegal billboards, so I wouldn't

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2 have had any problem with him reaching  
3 out.

4 If there are good ideas that  
5 achieve our objectives, regardless of the  
6 motives of the proposer, we'll certainly  
7 consider them.

8 Q. The first sentence of the  
9 second paragraph appears to reiterate a  
10 point with which you disagreed previously  
11 when it reads, "Dan, I know you have  
12 always appreciated how valuable a resource  
13 street furniture, telephone kiosks and  
14 other outdoor advertising assets can be to  
15 New York City," which followed the  
16 importance of prompt enforcement.

17 A. He is entitled to say whatever  
18 he wants; I think it is an overly  
19 inclusive overstatement of my view.

20 I didn't respond to him saying  
21 I definitely have always appreciated how  
22 valuable a resource street furniture,  
23 telephone kiosks and other outdoor  
24 advertising assets can be; in fact, as I  
25 have testified, while I do believe in the

1 DOCTOROFF

2 importance of street furniture, with  
3 respect to telephone kiosks, I believe  
4 they ought to be cut down dramatically and  
5 I have a very serious concern about many  
6 forms of outdoor advertising.

7 So I don't think this is an  
8 accurate reflection of my position.

9 Q. Then it goes on to say at the  
10 conclusion of the third paragraph, "Not  
11 only will you help clean up New York City,  
12 but you will be able to generate greater  
13 revenue for the city from its outdoor  
14 advertising assets."

15 Do you see that?

16 A. Again, an assertion on his  
17 part, that's nice, he is entitled to his  
18 point of view, but that is not an accurate  
19 reflection of my thinking on the subject.

20 Because, as I have said, I  
21 never confused the two, I never related  
22 cleaning up outdoor advertising with  
23 generating more revenue from our street  
24 furniture franchise or other assets.

25 Q. You notice, do you not, that on

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1  
2 the second page he sent ccs of this letter  
3 to the Commissioner of Buildings and two  
4 of its senior employees responsible for  
5 sign enforcement, Mona Sehgal and Edward  
6 Fortier, did you not?

7 A. I just noticed that.

8 Q. Having granted a meeting to  
9 him where he made his presentation with  
10 which you disagreed in part and then he  
11 follows with a letter to you --

12 A. When you say I disagree, let me  
13 just interrupt.

14 I am not saying I disagreed in  
15 the meeting, I didn't say I disagreed with  
16 the intent.

17 He and I may have had different  
18 motives, I do disagree with some of the  
19 assertions that he made about my motives,  
20 but not necessarily about my intent.

21 Q. Let's go back just to clarify  
22 that, go back to Exhibit 30 and if you  
23 would go to page 11501.

24 (Witness complying.)

25 Q. The last sentence of the first

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paragraph, "If New York City laws had been enforced, a significant portion of that money could have been spent on forms of outdoor advertising that provide revenue for the city such as the street furniture program."

Is it your testimony that that statement is accurate but did not reflect your view?

A. No, I hadn't even conceded that it is accurate.

What I think I have tried to say a couple of times is that I believe outdoor advertising, billboards, and street furniture and other related city assets are not related, that revenues from one, shifting of revenues from one, does not -- decrease in revenues from one does not translate an increase in revenues from the other.

Q. So it is true you disagree at least in part with statements that he made during his presentation?

A. No, I didn't say -- I didn't



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say anything at the meeting.

Q. I am not saying you said anything, but I thought you testified you listened and disagreed, albeit privately, with this point?

A. I don't know if I did or didn't, but I never believed there was a connection between the two.

So I never conceded that as a matter of fact an elimination of advertising on illegal outdoor signs would result in an increase in advertising revenue from the street furniture program.

Q. To that extent at least you disagreed with Mr. Schaps' presentation?

A. I do disagree; I can't tell you I disagreed to him.

Q. I am not saying that you said it, but you disagreed at the time you heard it?

A. I would have disagreed at that time.

But I will also say that it was never a consideration in our development

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of a policy with respect to outdoor advertising.

Q. Now let me go back to Exhibit 31, which is now a couple of days later when you receive it following the meeting.

Isn't he making the same point in the last sentence with which you disagreed at the time?

A. Yes, but I just said I probably didn't say anything about it at the meeting.

Q. I understand that.

My question is, now you learned, did you not, that he was sending a copy of this letter confirming his understanding, as he saw it, to your senior officials responsible in this area.

A. He probably would have said the same thing in the same meeting assuming they were there, so it certainly couldn't have been any surprise to them.

Q. Did you express your disagreement on this subject to either Commissioner Lancaster, Mona Sehgal,

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Edward Fortier, or anyone else at the  
Buildings Department?

A. I don't believe I did.

Q. To anyone else in the city  
government?

A. I don't recall.

Q. I would like to show the  
witness Exhibit 32 previously marked.

(Witness perusing document.)

Q. This is two e-mails in later  
July and neither of which are to you.

A. Yes.

Q. The lower and earlier one is  
from Mr. Schaps to Commissioner Lancaster;  
can you read that lower one.

A. Yes.

(Witness perusing document.)

Q. Is it true that Edward Fortier  
or Mona Sehgal, or responsible officials  
at the Buildings Department, were present  
at the meeting at your invitation?

A. I don't know.

Q. In the top e-mail, at the top  
of the page, Mona Sehgal says to

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Commissioner Lancaster, "Ed," meaning Fortier and "Phyllis," meaning Arnold, "have had numerous discussions and meetings with Van Wagner since 2001."

Did you know that in 2006?

A. I don't know.

Q. I would like to show the witness Exhibit No. 15 previously marked.

This is a letter from Mr. Pretsfelder, counsel to Van Wagner, to Mr. Fortier dated July 27, 2006, showing you as a copy.

Have you seen Exhibit 15 before?

(Witness perusing document.)

A. Yes.

Q. Did you review it at the time you received it?

A. I skimmed it.

Q. In the third paragraph Mr. Pretsfelder says to Mr. Fortier, "To help you in this process and pursuant to your request, we have enclosed a list of the top media-buying agencies and contacts

1 DOCTOROFF

2 at those agencies to whom we think the  
3 city's initial educational efforts should  
4 be directed."

5 Were you aware that Mr. Fortier  
6 had requested of Van Wagner a list of the  
7 media-buying agencies with a view to  
8 having the city contact them?

9 A. No, but if I had been, I would  
10 have applauded it.

11 Q. You would have applauded it?

12 A. Sure, we were very interested  
13 in insuring that we eliminate the illegal  
14 signs.

15 And, as I said before, the mere  
16 fact that we and Van Wagner saw the  
17 purpose of enforcement to be different  
18 doesn't mean that we were not in agreement  
19 with the goal of eliminating illegal signs  
20 and were prepared to look at ways of doing  
21 that.

22 Q. And so their proposal that the  
23 city write directly to the media ad  
24 agencies had your approval?

25 A. I can't say it had my approval,

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I don't remember weighing in specifically,  
I would have left that to Buildings to  
determine whether it was appropriate,  
legal, or whatever.

But if they determined that it  
was going to be effective in achieving our  
objective, then I would have generally  
applauded it.

Q. Did you read the draft letter  
to ad agencies that was attached to this  
letter?

A. No.

Q. I would like the witness to  
have an opportunity to review Exhibit 140.

(Witness perusing document.)

Q. This is an e-mail in October  
'06 relating to a meeting with Mike  
<sup>McKeehan</sup> McKeehan and Van Wagner and it says that  
"the required attendees are Elizabeth  
Weinstein and Edward Fortier."

Who was Elizabeth Weinstein?

A. She was a senior policy advisor  
who worked for me in the Mayor's Office of  
Operations and was responsible for me for

1 DOCTOROFF

2 paid toilets.

3 So I don't remember whether  
4 under the contract with CEMUSA we had the  
5 option to have more.

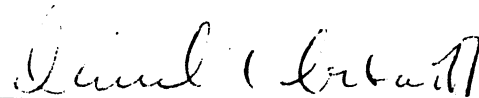
6 We may have negotiated for that  
7 option if the legislation ever changed.

8 Q. Is it your testimony Council  
9 limited you to have no more than 20 pay  
10 toilets?

11 A. Yes.

12 MR. KOVNER: I have no further  
13 questions.

14 (Time noted: 4:26 p.m.)

15  
16   
17

18 DANIEL DOCTOROFF

19  
20 Subscribed and sworn to before me  
21 this day of , 2008.  
22  
23  
24  
25

**EXHIBIT SS**



1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----X

4 METRO FUEL, LLC,

5 PLAINTIFF,

6 -against- Case No:  
7 07-CV-8244

8 CITY OF NEW YORK,

9 DEFENDANT.

10 -----X

11 DATE: June 26, 2008

12 TIME: 10:30 a.m.

13 EXAMINATION BEFORE TRIAL of the Plaintiff,  
14 METRO FUEL, LLC, by a witness, Jerry Wachtel, taken by the  
15 Defendant, pursuant to a court order and to the Federal  
16 Rules of Civil Procedure, held at the offices of the New  
17 York City Law Department, 100 Church Street, New York, New  
18 York 10007, before Shanasia Ilgner, a Notary Public of the  
19 State of New York.

20  
21  
22  
23  
24  
25

1 A P P E A R A N C E S:

2

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6

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11 Attorneys for Defendant  
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13 100 Church Street  
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15 BY: SHERYL R. NEUFELD, ESQ.  
16 -and-  
17 BY: CHRISTINA HOGGAN, ESQ.  
18 File #: 2007-029854  
19 Control #: III02334

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J. WACHTEL

1 it is safe for them to drive and if so, under what  
2 conditions.

3 Q. Is the lab up and running?

4 A. It's not up and running yet. It will be after  
5 Saturday of this week, (laughter) if my flight gets me home  
6 in time.

7 MS. NEUFELD: Off the record.

8 (Discussion off the record.)

9 Q. What do the simulators that you're going to be  
10 using simulate?

11 A. They simulate a driving environment, they are  
12 capable of visually reproducing with very high degree of  
13 realism, the driving experience all of the roads, the  
14 signs, the signals, the environment, the buildings and  
15 things, other vehicles and the traffic stream, et cetera,  
16 so that we can program the simulator computer in essence to  
17 create a kind of a driving challenge that we want the  
18 participant or the subject to experience.

19 Q. And then does the simulator measure what the  
20 driver does in that situation?

21 A. The simulator measures with great precision  
22 everything that the driver does, can measure where the  
23 driver is looking, how the driver controls the steering  
24 wheel, the gas pedal, the brake pedal, their reaction time  
25 to events that occur such as a child running out in the

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1 road between two parked cars or a car stopping short in  
2 front of them or situations like that.

3 Q. If I use the term "street furniture," what do you  
4 understand that to mean?

5 A. I think of street furniture as pieces of  
6 furniture placed by public entities, typically, on  
7 sidewalks. They may be benches or information kiosks or  
8 trash cans or shelters, bus shelters, et cetera.

9 Q. So it would include bus shelters?

10 A. It has the capability to create by writing  
11 software code, it has the capability to create the  
12 appearance of pretty much any object including street  
13 furniture.

14 Q. That actually wasn't my question, but you  
15 anticipated what my question was.

16 So in the simulator, you could, in theory,  
17 recreate a New York City street exactly as it looks?

18 A. I wouldn't use the word "exactly." No simulators  
19 are yet capable of -- you will always know that it's not  
20 real, that it's always a simulator, but they are getting  
21 better and better. New York City would be on the high end  
22 of difficulty because there is so much visual complexity to  
23 the scene. The more the visual complexity, the more  
24 demanding it is on the computer to create those graphics.  
25 So I can't, I can't say off hand how close this could come

J. WACHTEL

1 to creating a New York City street scene.

2 Q. Do you know if there are other companies out  
3 there using driving simulators or is driving lab a pioneer?

4 A. No, we are not by any means a pioneer. Driving  
5 simulators have been around for 60 or 80 years. The  
6 current state of the art has been around for the last five  
7 or ten years and there are probably dozens, maybe hundreds  
8 of them in use around the world.

9 Q. Are you aware of any experiments or projects that  
10 you use simulators to monitor what drivers look at in terms  
11 of outdoor advertising?

12 A. Yes. Not so much -- we think of the simulator as  
13 a tool to be used by someone with some degree of expertise.  
14 So I am aware of studies, research studies that have been  
15 conducted using simulators to study how drivers react or  
16 respond to outdoor advertising.

17 Q. Aside from the present case, have there been any  
18 other cases that you were retained in as an expert whether  
19 or not you actually ended up testifying that required you  
20 to do any sort of analysis of outdoor advertising on street  
21 furniture?

22 A. I can't think of any that fit that description.

23 Q. When you mentioned a minute ago studies that were  
24 conducted using simulators to look at how drivers react to  
25 outdoor advertising, were those studies about large format

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1 billboards on your highways or advertising on street  
2 furniture?

3 A. None of them, as far as I know, dealt with  
4 advertising on street furniture. Some of them dealt with  
5 large-scale billboards, some of them dealt with  
6 smaller-scale posters, what we call posters, that might  
7 have been on building facades or on posts, you know, like  
8 posts, et cetera. And when you do simulation, sometimes  
9 you try, you intentionally try not to make the visual scene  
10 as realistic as you might. You try to recreate the  
11 perceptual and cognitive or thought challenges without  
12 making it realistic. It's a little difficult to describe.  
13 The psychologists do that all the time. They're considered  
14 surrogates. So when we want, for example, to simulate a  
15 distraction that might be from a billboard or it might be  
16 from something else on the side of the road, a particular  
17 study may say what we're going to do is flash green light  
18 on the right side or red light on the left side and see  
19 whether or not the driver can see it and respond to it.

20 Q. So it would be a green light or a red light  
21 instead of an actual something that looked like a sign?

22 A. That's right. But what they're really trying to  
23 do is, find out whether something that's off in the side  
24 view that is not part of the driving task can serve to  
25 capture the driver's attention and/or distract the driver.

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1 Q. But would everything else in the environment be  
2 the same?

3 A. Not necessarily. In fact, in many cases, a lot  
4 of this is done in basic science where we're trying to  
5 understand the driver's thinking, process and so on and not  
6 necessarily solving a particular real-world problem. So  
7 they may strip everything away other than the bare minimum.  
8 So instead of having a road with all of the detail of  
9 sidewalks and crosswalks and things, they may have simply  
10 two white lines on the road with a yellow line in the  
11 middle and the driver's task may be, drive the simulator  
12 meaning use the gas pedal and the brake pedal and use the  
13 steering wheel and follow the road. And then they may have  
14 these things I was talking about like a flashing light on  
15 the side of the road to see whether the flashing light  
16 captures the driver's attention; and if it does, whether  
17 the driver's performance in following the road suffers.

18 Q. Am I wrong to assume that whether the driver is  
19 likely to look at the flashing light in that case, would  
20 depend in some degree as to what else is going on, that the  
21 driver has to focus on?

22 A. You're not wrong, but it depends on the  
23 particular purpose for a particular study. In some cases,  
24 a study, the intent of a study is just to see how easily  
25 distracted a driver may be. In other cases, it may be, it

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1 may be that the point of the study is to say, is it more  
2 likely to distract the driver or less likely to distract  
3 the driver if these targets, these stimuli are in a complex  
4 environment versus a simple environment.

5 Q. But if you wanted to actually see whether  
6 something in a particular environment was likely to  
7 distract, you would want it to replicate as close as  
8 possible the actual environment?

9 A. I think that's a fair statement.

10 Q. Now, not cases where you have been retained as an  
11 expert but in any other situation, have you, aside from  
12 this, been asked to conduct studies related to advertising  
13 on street furniture?

14 A. No. I don't believe so. I'm sorry. There's one  
15 exception that I can recall. I've done some work for the  
16 City of Seattle where they are installing a new light-rail  
17 system and they are contemplating outdoor advertising on  
18 these platforms of these stations so they are adjacent to  
19 the roadside. So I've done some work with the city for the  
20 city to help them plan for those.

21 Q. Are those platforms similarly situated to street  
22 furniture in New York City?

23 MR. HECKER: Objection.

24 A. It's hard to say they are similar. They're  
25 similar in that they are fairly close to the side of the



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1 straight ahead to be the center line of their vision. The  
2 cone of vision is sort of in the shape of a triangle where  
3 the point where the two sides of the triangle come together  
4 is at the driver's eye -- can I draw it?

5 MS. NEUFELD: Sure. We'll have to mark it  
6 as an exhibit, but go right ahead.

7 A. Art is not my forte. Let's say we have a driver,  
8 here's our stick figure driver and he's or she's in a car  
9 and they are driving in this direction so the driver wants  
10 mostly to be looking straight ahead, that's where the  
11 traffic is, that's where the signs are, et cetera. Of  
12 course we want them to be turning their head from side to  
13 side to look at rear view mirrors, side view mirror, other  
14 traffic, but mostly they are looking straight ahead. So  
15 the cone of vision, they call it a cone because it's  
16 three-dimensional. But if we draw it flat like this, it's  
17 two-dimensional, it's like that. So this is the angle, all  
18 right. So when --

19 Q. This being the arc like --

20 A. This little arc like thing. So this line  
21 represents straight ahead.

22 Q. The line through the middle?

23 A. The two lines to the side represent what we  
24 consider to be the edges, if you will, of the cone of  
25 vision. When we say plus or minus 10 or 12 degrees, some

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1 people think of it as 15 degrees. It's not a rigid number.  
2 So let's say this would be 12 degrees and this would be 12  
3 degrees on either side.

4 Q. So the lines you already have are the 12 degree?

5 A. Right. So the cone of vision would be everything  
6 within this area, that's basically within 24 degrees of  
7 straight ahead.

8 Q. Okay.

9 A. So anything that's out here or out here is not  
10 within the cone of vision and anything that's in here is  
11 within the cone of vision.

12 Q. When you say "out here," you mean outside --

13 A. Beyond.

14 Q. The two lines that you've drawn that look like a  
15 V, and when you say inside you mean in that 24 degree --

16 A. Are you a baseball fan?

17 Q. Not so much.

18 A. This is foul territory.

19 Q. I mean, that I get.

20 MR. HECKER: Have you ever had a dog have  
21 surgery?

22 MS. NEUFELD: Oh, the cone. Yeah.

23 THE WITNESS: That's not the cone of vision  
24 though. (Laughter)

25 Q. Okay. Very good.

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1 (Defendant's Exhibit C, drawing, marked for  
2 identification.)

3 Q. With Exhibit C that you've so nicely drawn for us  
4 in front of you, on a typical New York City street, where  
5 does street furniture fall in your drawing?

6 MR. HECKER: Objection.

7 MS. NEUFELD: What's the basis of the  
8 objection?

9 MR. HECKER: I object to the form. I find  
10 the question ambiguous and confusing, but I'll  
11 let Mr. Wachtel answer the question anyway he  
12 can.

13 MS. NEUFELD: Well, I want --

14 Q. Is it possible to represent on this drawing a bus  
15 stop shelter that you encounter while you were here in New  
16 York City?

17 MR. HECKER: Again, I'll just object.

18 A. I need to explain one other thing about the  
19 drawing and then maybe my answer will be a little clearer.  
20 The way this is drawn now shows this driver in this car  
21 with this cone of vision as if the driver stopped. Right.  
22 So this 24 degrees goes out from my eyes, out there, but  
23 when we talk about moving traffic, the driver is only  
24 stopped at traffic lights or stop signs or at traffic  
25 stops, otherwise, the driver is moving. As the driver

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1 moves, the cone of vision, because based on his head, on  
2 his eye, the cone of vision moves with him. So as a driver  
3 is driving -- I'll make another exhibit so we don't confuse  
4 them. So as the driver is driving down the street, let's  
5 say here's the street and the car is here, my cone of  
6 vision may be like that.

7 Q. So are you saying that your cone of vision  
8 changes depending on where you are on the street?

9 A. Yes. It changes constantly as I go. So the more  
10 I move this way, same car, same cone of vision, right; now  
11 it extends out at the same angle. So let's say there is a  
12 street furniture, a bus shelter, newsstand, whatever,  
13 public telephone and it's here, when I'm here, it's in my  
14 cone of vision. When I get closer to it, it may go out of  
15 my cone of vision.

16 Does that answer your question?

17 Q. It does. Exhibit D.

18 (Defendant's Exhibit D, drawing, marked for  
19 identification.)

20 Q. I'm just curious -- if you know, you know; you  
21 don't, you don't -- do you know how many feet a typical New  
22 York City street block is? Not an avenue block, but a  
23 street block, like say from East 23rd Street to East 24th  
24 Street.

25 A. I don't.

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1 Q. Let's assume it's about 100 feet.

2 A. Okay.

3 Q. Is there a way to figure out based on how many  
4 feet a block is, how far a driver can see or what would be  
5 in the cone of vision? Is there any correlation between  
6 that?

7 A. There is a way to figure that out, yes.

8 Q. How do you figure that out?

9 A. You perform basic trigonometry, so.

10 Q. Words lawyers do not like to hear.

11 A. Just so -- shall I draw on this or start a new  
12 exhibit?

13 Q. Whatever you prefer.

14 MR. HECKER: Let the record reflect that Mr.  
15 Wachtel is making further drawings on Exhibit D.

16 A. Okay. So let's use this example.

17 Q. The one closest to the top of the page?

18 A. Correct. So what I would do, I take my straight  
19 line, all right, so let's say I want to determine if a  
20 particular item of street furniture is or is not within the  
21 cone of vision at a particular location. So let's say here  
22 is my piece of street furniture.

23 Q. You've marked a box with an X in it or what you  
24 are looking at as your left hand side of the page.

25 MR. HECKER: I believe the right.

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1 Q. My left hand side of the page.

2 A. So here's my driver, here is the line that's  
3 straight ahead.

4 Q. So you've made a dot in the first --

5 A. I've made a little circle for the driver's eye,  
6 I've drawn a more heavy line for the straight view and now  
7 I'm going to draw a heavier line for the right hand edge of  
8 the cone of vision.

9 Q. Okay.

10 A. And now, I'm going to connect this triangle at  
11 the top.

12 Q. You've made a line, a horizontal line right under  
13 the box with the X?

14 A. Yes.

15 Q. To make this example easier, I'm going to erase  
16 this box and put it right here at the end of the cone of  
17 vision?

18 A. Right. So now I know what my angle is because  
19 the cone of vision is 12 degrees.

20 Q. Okay.

21 A. So this angle right in here is 12 degrees.

22 Q. Okay.

23 A. This is what we call a right triangle.

24 Q. Yes.

25 A. So, therefore, this is 90 degrees. We know that

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1 from our basic trigonometry. The angle between the  
2 straight ahead view where it meets an imaginary line that  
3 goes from the straight ahead to the object that we're  
4 interested in, to the bus shelter.

5 Q. Okay.

6 A. So this is 90 degrees.

7 Q. Correct.

8 A. This is --

9 Q. Well, 90 degrees to the piece of street  
10 furniture?

11 A. No. 90 degrees, it doesn't measure distance, it  
12 only measures the angle between these two lines. The  
13 distance we will come to in a minute.

14 Q. Okay.

15 A. So we have 90 degrees, we have 12 degrees here,  
16 we don't yet know what this angle is.

17 Q. Okay.

18 A. Now, we can measure this because we know if  
19 here's the end of the street, right, we know how far the  
20 driver's eye is from the curb, we can measure it, right.  
21 If I put my tape measure at your eye in your car and I  
22 measure the distance to the curb, I know what that distance  
23 is.

24 Q. Wait a second. So you're assuming that the  
25 driver is looking --